

### **REMARKS**

Claims 1-3, 7-16, and 20-22 are pending in the present application. Claims 1, 2, 5-10, 12-13, 16, 18-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Christensen (US 6,957,041), in further in view of Bolleman (US 6,286,063), in further view of Kesling (US Pub. No. 20020132575), and in further view of APA (applicant's admitted prior art in US Pub. No. 20050071240, para 0020).

The examiner is respectfully asked to reconsider the application and to withdraw the rejections in view of the following remarks. Should the examiner have any questions or concerns with respect to the application, he is invited to contact applicants' undersigned attorney at (206) 332-1392.

### **Prosecution History**

A brief history of the present application is provided below to highlight Applicant's and the Office's mutual interest in the expedited resolution of this case.

- The first Non-Final Office Action (NFOA) was issued on November 22, 2004. The claims were rejected under 35 USC §102 and 35 USC §103 citing Kesling.
- A Final Office Action (FOA) was issued on June 2, 2005. The claims were rejected under 35 USC §102 and 35 USC §103 citing Kesling.
- A first RCE was filed after a first Appeal. A second FOA was issued on August 1, 2006. The claims were rejected under 35 USC §102 and 35 USC §103 citing Kesling.
- A second RCE was filed after a second Appeal. A NFOA was issued on August 23, 2007. The claims were rejected under 35 USC §103 citing Kesling and Borovoy.
- A FOA was issued on March 17, 2008. The claims were rejected under 35 USC §103 citing Kesling and Borovoy.
- A third RCE was filed on July 21, 2008 following by a NFOA issued on September 30, 2008. The claims were rejected under 35 USC §103 citing Kesling and Borovoy or Joseph.

- A FOA was issued on June 26, 2009. The claims were rejected under 35 USC §102 citing Christensen and under 35 USC §103 citing Christensen and Moskowitz.
- A fourth RCE was filed on October 13, 2009 after which a NFOA was issued on December 30, 2009. The claims were rejected under 35 USC §103 citing Christensen, Bolleman, and Moskowitz.
- In the present FOA, the claims are rejected under 35 USC §103 citing Christensen, Bolleman, Kesling, and Moskowitz.

### **Interview**

Applicant would like to thank Examiner Fadok for the courtesy extended during the telephonic interview conducted on August 11, 2010. Although no agreement was reached, the distinctions between the cited references and the pending claims were discussed. Should the Examiner have any questions or concerns that might be efficiently resolved by way of a telephonic interview, the examiner is invited to call Applicant's undersigned attorney.

### **Rejections Under 35 USC §103(a)**

Claims 1, 2, 5-10, 12-13, 16, 18-22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Christensen, in further in view of Bolleman, in further view of Kesling, and in further view of APA. Applicant traverses this rejection and requests reconsideration thereof.

Applicant's claims are generally directed to the subject matter described in the specification, for example, in paragraphs [0017]-[0022] and [0025]. This subject matter concerns applicant's inventive system and method for purchasing goods and services related to broadcast media. As described, a system with a broadcast receiver receives broadcast media, such as a radio signal, and the media includes information relating to goods and services that can be purchased by persons receiving the media. The receiver includes an indicator button or other means so that the person can simply indicate the desire to purchase a good or service while that service is advertised in the broadcast media. The broadcast receiver informs the person if purchase is not available after pressing the button. Once the button is pressed, the broadcast receiver records the purchase data and transmits the purchase data to one or more servers which

selectively receive and verify purchase data sent from the one or more receivers. The broadcast media is not required to include any explicit information in the broadcast media stream about the purchase of the goods and services.

Applicant's claims are directed to a system (claims 1-4 and 7-8), a broadcast receiver (claims 9-11), and a method (claims 12-16 and 20-22), each of which includes or employs aspects of the system and method for purchasing goods and services related to broadcast media discussed above. For example, claim 1 recites that the system includes one or more broadcast receivers that *"receive in-band broadcast radio media and determine, based on the media, information relating to goods and services that can be purchased by persons receiving the media,"* and that the information *"can be determined when the broadcast radio media does not include explicit information pertaining to purchase of the goods and services. . ."*

Christensen is generally directed to a system that provides a radio broadcast listener with the ability to purchase media content such as music or speech while listening to the radio. In the system of Christensen, data such as song title and artist, author or publisher and the IP address for the location where the digital version of the content is transmitted using the RBDS/RDS data stream (Christensen, Abstract).

Kesling is generally directed to a system for mobile commerce in a satellite radio broadcasting system. A unique program identifier is associated with each program segment of a broadcast. When a listener hears a program segment of interest, the listener causes the associated program identifier to be captured and thereafter to be transferred to a central location or hub. Upon receipt of the program identifier at the central hub, the program identifier is used to determine information about the listener, obtain additional information regarding the program segment associated with the program identifier for the listener and/or initiate an e-commerce transaction involving the listener and/or other parties including merchandisers and advertisers (Kesling, Abstract).

With regard to independent claims 1, 9 and 12, each of these claims recites the important aspect of receiving media and determining, based on the media, information relating to goods and services that can be purchased by persons receiving the media, wherein the information can be determined *when the broadcast radio media does not include explicit information*

*pertaining to purchase of the goods and services.* Thus, as indicated in paragraph [0025] of Applicant's specification, "if the broadcast media is a radio broadcast, each song does not have to include an advertisement of its identity or even state that it is available for purchase to the user of the broadcast receiver 14."

It is clear that the system of Christensen includes specific information pertaining to the purchase of the media in the broadcast stream. See, for example:

- col. 4:64-65: "radio text information or messages displaying purchase options"
- col. 4: 67-col.5: 1: "instructions for the location of downloadable audio"
- col. 5: 5-8: "a location where the song, editorial news broadcast, collection of songs, or other program material can be downloaded or purchased, and the purchase price for the song"
- col. 6: 7-14: "the APS server 144 incorporates station call letter information, and an audio download location such as IP address and a file name into a data stream that is inserted into a radio station's broadcast using RBDS/RDS or similar technology"

The Examiner contends that Kesling paragraphs [0008], [0055] and [0060] disclose that information can be determined when the broadcast radio media does not include explicit information pertaining to purchase of the goods and services. Applicant respectfully disagrees. Kesling paragraph [0055] states:

If the listener is driving a car, however, it may be hazardous to write something down on paper. To avoid such dangerous activity, the listener may instead press select button 1220 when content of interest is played on radio 20. The program identifier (at least) associated with that content is then stored in non-removable memory 500. When the listener has stopped driving, he may then scroll through the program identifiers (along with any other related information listed in the table of FIG. 6) using scroll button 1230. He can then write down the program identifiers that are still of interest to him

(emphasis added). This paragraph merely states that a listener can manually retrieve a program identifier for a particular content item at a future time.

Kesling paragraph [0060] states:

Employing a physical media link 1140 such as a flash memory card simplifies the transferring of program identifiers from radio 20 to computer 1150 or kiosk 1180. In this case, every time a listener presses select button 1220, the program identifier associated with the content being played at that time is stored on media link 1140. Media link 1140 is then, as described previously, taken to a reader, which is preferably connected to computer 1150 or associated with kiosk 1180, and the information stored thereon is downloaded so that the user may proceed with purchase of a product, obtain further information or provide feedback regarding the content that was broadcast

(emphasis added). Here, Kesling merely discloses that the program identifier may be stored on a media device for subsequent processing.

Kesling paragraph [0008], according to the Examiner, is cited only to show that a display is optional (Office Action, page 4).

None of these passages teach or suggest receiving in-band broadcast radio media and determining, based on the media, information relating to goods and services that can be purchased by persons receiving the media, wherein the information can be determined when the broadcast radio media does not include explicit information pertaining to purchase of the goods and services, as recited in Applicant's claims. Moreover, the teachings of these references are clearly against creating this element.

Kesling teaches that:

a studio/uplink site digitally encodes selections of music and/or information and applies a header that includes the program identifier (PID) that uniquely identifies each selection. The program identifier may uniquely identify a selection of music, an advertisement, merchandise associated with an advertisement, or a response or reaction to something that is transmitted to a radio receiver, including both audio, text and/or other visual information

(emphasis added, see Kesling paragraph [0017]). Thus a unique identifier is an important aspect of the system of Kesling, which the present Office Action simply ignores.

None of the cited references - Kesling, Christensen, Bolleman, Kesling or the "APA" shows the presently claimed element of avoiding the need to synchronize any secondary database with the broadcast media. Yet, after appeal, withdrawal of Kesling, replacement of Kesling, and the citation of at least eight references and combinations of references, this element has not been meaningfully addressed.

For at least the above reasons, Applicant submits that the combination of Christensen, Bolleman, Kesling, and APA does not teach or suggest claims 1, 9 and 12 and are allowable. Applicant submits that dependent claims 2, 7-8, 10, 13, 16, and 20-22 are allowable at least by virtue of their dependency on an allowable base claim.

Claims 3, 11 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Christensen in view of Bolleman, in view of Kesling, in view of APA and further in view of Moskowitz et al.. Applicant respectfully traverses the rejection and requests reconsideration.

For at least the grounds argued earlier with respect to the patentability of independent claims 1, 9 and 12, from which claims 3, 11 and 15 ultimately depend, claims 3, 11 and 15 are not obvious in view of Bolleman, in view of Kesling, in view of APA and further in view of Moskowitz et al. For at least the above reasons, Applicant respectfully requests withdrawal of the rejection of claims 3, 11 and 15.

### **Nonobviousness of Claimed Invention**

As stated in MPEP § 2141, the key to supporting any rejection under Section 103 is "the clear articulation of the reason(s) why the claimed invention would have been obvious." Moreover, "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." Exemplary rationales that may support a conclusion of obviousness, as set forth in the MPEP, include those noted below in the margin.<sup>1</sup> Of these

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<sup>1</sup> The MPEP lists the following rationales:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;

enumerated rationales that may support an obviousness rejection, the only ones that could arguably correspond to the examiner's explanation of the rejection of claims 1, 9 and 12 are, "(A) Combining prior art elements according to known methods to yield predictable results," and "(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention." In this case, however, the Office Action offers an inadequate justification of the rejection.

The simple assertion of *"It would have been obvious . . . to include in the combination of Christensen and Bolleman wherein the information can be determined when the broadcast radio media does not include explicit information pertaining to purchase of the goods and services as is taught by Kesling, because this will allow the user to purchase or get additional information while driving without having to read the information which may be hazardous,"* falls far short of the required showing set forth in the MPEP, i.e., a *"clear articulation of the reason(s) why the claimed invention would have been obvious"* and *"articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."* For example, under category (A), the office action is deficient because it lacks the necessary substantial (non-conclusory) showing of how Christensen, Bolleman and Kesling, when combined per claim 1, 9 and 12, would yield predictable results. Further, under category (G), the office action is lacking with respect to the required teaching, suggestion, or motivation that would have led one of ordinary skill to (1) ignore the teachings of Kesling and Christensen to explicitly learn of the purchase information from the broadcast media stream; (2) modify Christensen and Bolleman, or (3) to combine a modified Christensen, Bolleman and modified Kesling to arrive at the claimed invention. Finally, it seems unclear how allowing a person to get additional information while driving is relevant to Applicant's claims.

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(E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;

(F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;

(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

For at least these reasons, the examiner is respectfully urged to withdraw the rejections under 35 U.S.C. § 103(a).

### **Conclusion**

In view of the foregoing remarks, Applicant respectfully submits that Claims 1-3, 7-16, and 20-22 are in condition for allowance and entry of the present amendment and notification to that effect is earnestly requested. If necessary, the Examiner is invited to telephone Applicant's attorney (206-332-1392) to facilitate prosecution of this application.

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